



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

April 28, 2006

D.T.E. 06-38

Rulemaking by the Department of Telecommunications and Energy on its own motion to amend 220 C.M.R. §§ 151.00 et seq.: Rail Fixed Guideway System: Safety System Program Standard.

ORDER ADOPTING EMERGENCY REGULATIONS

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A, § 2, the Department of Telecommunications and Energy (“Department”) adopts as emergency regulations 220 C.M.R. §§ 151.00 et seq.: Rail Fixed Guideway System: System Safety/Security Program Standard. The Department’s regulations at 220 C.M.R. §§ 151.00 et seq. establish the standard for Department oversight of the Massachusetts Bay Transportation Authority (“MBTA”) to implement the provisions of 49 U.S.C. 5330 and 49 C.F.R. 659. In 2005, the Federal Transit Administration (“FTA”) revised 49 C.F.R. 659: Rail Fixed Guideway Systems; State Safety Oversight.¹ To comply with the revisions to 49 C.F.R. 659, the Department must promulgate revised regulations 220 C.M.R. §§ 151.00 et seq.. The emergency regulation is necessary for the public safety and the general welfare of the citizens of the Commonwealth. A final Order must be issued within 90 days after an opportunity to comment pursuant to G.L. c. 30A, § 2. The emergency regulations are designated as 220 C.M.R. §§ 151.00 et seq. and are effective upon filing with the Secretary of the Commonwealth.

II. HISTORY OF THE PROCEEDING

The Commonwealth of Massachusetts has one rail fixed guideway system (i.e., the “subway”), operated by the MBTA. The Department exercises oversight of the safety of equipment and operations of the MBTA pursuant to G.L. c. 161A, § 3(I).² In the discharge of

¹ Department of Transportation, Federal Transit Administration, 49 CFR Part 659, Rail Fixed Guideway Systems; State Safety Oversight; Final Rule, 70 Fed. Reg. 22562 (April 29, 2005).

² The Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”), Pub. L. No. 102-240, codified at 49 U.S.C. 5330 (1994) through the promulgation of FTA
(continued...)

this responsibility and in compliance with FTA requirements, the Department promulgated 220 C.M.R. §§ 151.00 et seq., the System Safety Program Standard (“SSPS”), consisting of regulations for hazardous conditions safety, personal security oversight, and track inspection and maintenance. See Investigation by the Department of Public Utilities to Propose a Plan for State Safety Oversight of the Massachusetts Bay Transportation Authority’s Rail Fixed Guideway System, D.P.U. 96-116 (1997), Investigation by the Department of Telecommunications and Energy to Amend 220 C.M.R. 151.00 et seq., D.T.E. 98-11 (1998), Investigation by the Department of Telecommunications and Energy to Promulgate 220 C.M.R. 151.08 and 220 C.M.R. 151.09, D.T.E. 98-75 (1998), Investigation by the Department of Telecommunications and Energy to Amend 220 C.M.R. 151.00 et seq., D.T.E. 00-38 (2000), Rulemaking by the Department of Telecommunications and Energy to Promulgate 220 C.M.R. 151.00 et seq., D.T.E. 01-37 (2001), Petition by the Massachusetts Bay Transportation Authority to Commence a Rulemaking to Amend 220 C.M.R. 151.00 et seq., D.T.E. 03-42 (2004). The SSPS established the criteria the MBTA³ used to create a System Safety Program Plan (“SSPP”).

² (...continued)
regulations at 49 C.F.R. 659: Rail Fixed Guideway Systems; State Safety Oversight, requires states that operate a rail fixed guideway system that is not regulated by the Federal Railroad Administration (“FRA”) to designate a state agency to be responsible for overseeing the rail fixed guideway system’s safety and security plans.

³ 220 C.M.R. §§ 150.00 et seq., Railroad Safety Regulations, is applicable to each railroad company operating within the Commonwealth. 220 C.M.R. §§ 151.00 et seq. contains regulations specifically applicable to the MBTA.

To comply with the FTA's revisions to 49 C.F.R. 659, the Department must promulgate revised regulations 220 C.M.R. §§ 151.00 et seq.. The compliance date for the revised 49 C.F.R. 659 is May 1, 2006.⁴ To meet the FTA's compliance deadline and immediately adopt the revised safety and security regulations, the Department proposes to proceed with an emergency rulemaking to make the revised regulations permanent.

III. ANALYSIS

The Department's authority to adopt emergency regulations is clear. The Department's regulations provide that upon a finding that "the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary to the public interest," the Department may dispense with such requirements and adopt emergency regulations. 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2.

The need to move with dispatch to adopt these revised MBTA safety and security regulations necessitates resort to the emergency regulation provision of the Administrative Procedure Act. G.L. c. 30A, § 2. Further action will be required to make the regulations permanent, including an opportunity for public comment. A later public hearing and Department Order will provide that opportunity.

The Department finds that the immediate amendment of the rules and regulations governing MBTA safety and security is necessary for the public health, safety, or general

⁴ Department of Transportation, Federal Transit Administration, 49 C.F.R. Part 659, Rail Fixed Guideway Systems; State Safety Oversight; Final Rule, 70 Fed. Reg. 22562 (April 29, 2005).

welfare. The Department further finds that delay in implementation of these regulations caused by the requirements of notice and public comment would be detrimental to public safety and, therefore, contrary to the public interest. When they were originally promulgated in 1997, the regulations were found to be in the public interest, as they specify and set out a “systemized procedure for identifying and rectifying potential accident causing situations, thereby increasing the safety of the traveling public.” D.P.U. 96-116, at 3. These regulations continue to be in the public interest. Accordingly, the Department adopts as emergency regulations 220 C.M.R. §§ 151.00 et seq., entitled Rail Fixed Guideway System: System Safety/Security Program Standard. These regulations are effective for 90 days upon filing with the Secretary of the Commonwealth, during which time the Department will proceed with a rulemaking to make the regulations permanent.

IV. ORDER

Accordingly, it is

ORDERED: That the regulations attached hereto and designated at 220 C.M.R. §§ 151.00 et seq. are necessary for the public health, safety or general welfare within the meaning of G.L. c. 30A, § 2.; and it is

FURTHER ORDERED: That the regulations entitled “Rail Fixed Guideway System: System Safety/Security Program Standard” attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED: That these regulations shall take effect upon filing with the Secretary of the Commonwealth.

By Order of the Department,

/s/

Judith F. Judson, Chairman

/s/

James Connelly, Commissioner

/s/

W. Robert Keating, Commissioner

/s/

Paul G. Afonso, Commissioner

/s/

Brian Paul Golden, Commissioner